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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ALAN D. BRIDGFORD,

11 Plaintiff,

12 v.

13 MICHAEL J. ASTRUE, Commissioner  
14 of the Social Security Administration,

15 Defendant.

Case No. 09-cv-0327-RSM-JPD

REPORT AND RECOMMENDATION

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17 I. INTRODUCTION AND SUMMARY CONCLUSION

18 Plaintiff Alan D. Bridgford, proceeding *pro se*, is seeking judicial review of the initial  
19 determination of the Commissioner of the Social Security Administration (“Commissioner”)  
20 finding him not disabled under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-  
21 33 and 1381-83f. Before the Court is the Commissioner’s motion to dismiss Plaintiff’s  
22 complaint, under Federal Rule of Civil Procedure 12(b)(1), for failure to exhaust administrative  
23 remedies. Dkt. No. 9. As his apparent opposition to the motion, Plaintiff has only requested a  
24 hearing before the Court. *See* Dkt. No. 11. Based on the Commissioner’s motion and  
25 supporting papers, the governing law, and the balance of the record, the Court recommends  
26 that the Commissioner’s motion to dismiss Plaintiff’s complaint for failure to exhaust

1 administrative remedies, Dkt. No. 9, be GRANTED and that Plaintiff's complaint be  
2 DISMISSED without prejudice.

## 3 II. PROCEDURAL HISTORY

4 Plaintiff first contacted the Commissioner about applying for disability insurance  
5 benefits and supplemental security income in April 2008, and Plaintiff's applications for  
6 benefits are dated July 29, 2008. Dkt. Nos. 9-2, 9-3. The Commissioner issued his initial  
7 determinations denying Plaintiff's applications on November 18, 2008. Dkt. Nos. 9-4, 9-5.

8 The Commissioner's initial determination notices informed Plaintiff that he could  
9 appeal the adverse determinations by filing a written request for reconsideration within 60 days  
10 of receiving the notices. *Id.* Plaintiff never filed an administrative appeal. Dkt. No. 9-6 at 3.

11 On March 13, 2009, Plaintiff filed a complaint seeking judicial review of the initial  
12 determination of the Commissioner. Dkt. No. 4. Plaintiff alleges that he is disabled under the  
13 Social Security Act and that the Commissioner has violated the Ninth Amendment and the  
14 Supremacy Clause of the United States Constitution. Dkt. No. 4 at 2-3. Plaintiff provides no  
15 basis for the alleged constitutional violations. *Id.*

## 16 III. DISCUSSION

### 17 A. The Applicable Law

18 A claimant obtains the Commissioner's "final decision" qualifying for judicial review  
19 only after completing the four steps of the administrative review process: (1) initial  
20 determination; (2) reconsideration determination; (3) hearing before an administrative law  
21 judge (ALJ); and (4) Appeals Council review. *See* 20 C.F.R. §§ 404.900(a), 416.1400(a).  
22 After the Appeals Council rules on a claimant's request for review, the claimant may request  
23 judicial review in a federal district court. 20 C.F.R. §§ 404.981, 416.1481.

24 A federal district court's review of claims arising under Titles II and XVI of the Social  
25 Security Act is limited, and may only occur after a "final decision" has been rendered by the  
26 Commissioner after a hearing before an ALJ. *See* 42 U.S.C. § 405(g); *Subia v. Commissioner*

1 of *Social Security*, 264 F.3d 899, 902 (9th Cir. 2001). A claimant's failure to exhaust his  
2 administrative remedies set forth in the Social Security Act deprives the district court of  
3 subject matter jurisdiction. *Bass v. Social Security Administration*, 872 F.2d 832, 833 (9th Cir.  
4 1989). However, the district court may waive a claimant's failure to exhaust administrative  
5 remedies and grant him judicial review if he asserts a colorable constitutional claim. *Subia*,  
6 264 F.3d at 902.

7 B. Plaintiff Failed to Exhaust His Administrative Remedies.


8 Here, Plaintiff failed to exhaust his administrative remedies because he completed only  
9 the first step in the administrative review process before filing a complaint for judicial review.  
10 Plaintiff obtained initial determinations which denied his applications for disability insurance  
11 benefits and supplemental security income, but he did not file a request for reconsideration. In  
12 other words, he failed to complete the last three steps in the administrative review process:  
13 reconsideration, ALJ hearing, and Appeals Council review. Accordingly, the Court lacks  
14 subject matter jurisdiction over Plaintiff's claims. *See* 42 U.S.C. § 405(g); *Subia*, 264 F.3d at  
15 902; *Bass*, 872 F.2d at 833.

16 While a court may waive the administrative exhaustion requirement if a claimant  
17 asserts colorable constitutional claims, the mere assertion of a bare constitutional violation  
18 without supporting allegations does not constitute a colorable constitutional claim. *See Subia*,  
19 264 F.3d at 902; *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th Cir. 2008). Here, Plaintiff's  
20 alleged violations of the Ninth Amendment and the Supremacy Clause are bare and  
21 unsubstantiated, and appear merely to be one and the same with Plaintiff's dispute with the  
22 Commissioner's denial of his claim for benefits. Accordingly, Plaintiff has not asserted a  
23 colorable constitutional claim, and the Court will not waive the administrative exhaustion  
24 requirement.

1 IV. CONCLUSION

2 For the foregoing reasons, the Court recommends that the Commissioner's motion to  
3 dismiss Plaintiff's complaint for failure to exhaust administrative remedies, Dkt. No. 9, be  
4 GRANTED and that Plaintiff's complaint be DISMISSED without prejudice. Because the  
5 Court concludes that a hearing is unnecessary, the Court also recommends that Plaintiff's  
6 motion requesting a hearing, Dkt. No. 11, be DENIED.

7 DATED this 25th day of June, 2009.

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9 JAMES P. DONOHUE  
10 United States Magistrate Judge  
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